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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1st DAY OF APRIL 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

H.R.R.P.Nos.4566 & 5154 of 1991

Shaik Ameer
S/o Chote Peer Saheb
No. 1194, 13th Cross,
Tannery Road, .. Petitioner
Bangalore. (Respondent in
HRRP 5154/91)

Vs.

Smt.Khamarunnissa
W/o Anwar Shariff,
1194, 13th Cross,
Tannery Road,
Bangalore. .. Respondent
(Petitioner in
HRRP 5154/91)

[Sri S.A.Nazeer,
Advocate for
petitioner in
HRRP No.4566/91
and for Respondent
in HRRP 5154/91;
Sri Mushtaw Ahmed,
Advocate for
petitioner in
HRRP No.5154/91
and for respondent
in HRRP No.4566/91]

House Rent Revision Petitions filed under
Section 50(1) of the Karnataka Rent Control
Act, 1961 challenging the order dated 28-9-
1991 made by the Court of Small Causes Judge,
Mayo Hall, Bangalore, in H.R.C.No.10635/1985.

These revision petitions coming on for
hearing before Court this day, the Court made

the following:

O R D E R

Since these two revision petitions are directed against the order dated 28th of September 1991 made in H.R.C.No.10635/91 by the learned Small Causes Judge, Mayo Hall, Bangalore (hereinafter referred to as "the learned Judge"), they are taken up together and disposed of by this common order.

2. H.R.R.P.No.5154/91 is by the landlord. she is aggrieved by the order passed by the learned Judge rejecting her claim for eviction of the respondent from the petition schedule premises under Section 21(1)(^h) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Act").

3. H.R.R.P.No.4566/91 is by the tenant. He is aggrieved by the order passed by the learned Judge directing his eviction from the petition schedule premises under Section 21(1)(a) of the Act.

4. In H.R.R.P.No.5154/91, an application-I.A.I for appointment of the Commissioner has

been filed. It is the case of the landlady that the tenant has vacated the petition schedule premises and it is kept under lock and key; and, therefore, the petition schedule premises is no longer required by the tenant. In the said application, the landlady has sought for appointment of the Commissioner to inspect the petition schedule premises and report to the Court as to whether the tenant has vacated the petition schedule premises or not. Though the said application was filed as far back as on 30th of March 1995, till now objections have not been filed to the said application.

5. However, Sri S.A.Nazeer, learned Counsel appearing for the tenant, submitted that inspite of the letters written by him to the tenant, to enable him to file objections to the application, the tenant has not responded to his letters; and under these circumstances, objections could not be filed to the application-I.A.I.

6. The petition schedule premises consists

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of two rooms measuring 8' x 5', out of which one is being used as a Kitchen. The landlady sought eviction of the tenant on the ground that the accommodation available with her consist of only a room measuring 8' x 5', which is being used by her and the members of her family and another room measuring 8' x 5', which is being used as Kitchen. According to the landlady, she is residing along with her six children and her husband; and therefore, the accommodation available for her in the premises occupied by her is totally insufficient for the use and occupation by her and the members of her family. The learned Judge, on consideration of the evidence on record, rejected the claim of the landlady on the ground that subsequent to the filing of the petition, one other premises similar to the dimension of the petition schedule premises had become vacant and the landlady having failed to occupy the said premises, is not entitled to seek eviction of the tenant.

7. Sri Mushtaq Ahmed, learned Counsel

appearing for the landlady, submitted that the finding recorded by the learned Judge that one other premises had fallen vacant subsequent to the filing of the eviction petition, is totally erroneous in law. According to the learned Counsel, the said premises, which is said to have fallen vacant, did not fall vacant subsequent to the filing of the eviction petition by the landlady, but it had fallen vacant long prior to the filing of the eviction petition, which is being occupied by the brother of the landlady. He further submitted that the evidence on record would clearly establish that the landlady is residing with her six children and the husband of the landlady is also residing with her though he visits his second wife occasionally. Therefore, he submitted that the order under revision rejecting the claim of the landlady for eviction of the tenant under Section 21(1)(h) of the Act is liable to be set aside.

8. Sri Nazeer strongly supported the order passed by the learned Judge.

9. Having heard the learned Counsel for the landlady and the tenant, I am of the view that the order under revision is liable to be set aside. The evidence on record shows that the landlady is residing in the petition schedule building along with her six children. The accommodation available with her is only a room and a kitchen. The eviction petition is of the year 1985. The Court can take judicial notice of the fact that the children of the landlady have sufficiently grown up. Even assuming that the husband of the landlady is not permanently residing with her in view of the fact that he has taken another wife, the accommodation available with the landlady in the premises presently occupied by her to accommodate her and her six children, is totally insufficient. Further, the landlady has asserted in her evidence that the premises, which is said to have fallen vacant, had fallen vacant long prior to the filing of the eviction petition and the said premises is occupied by her brother. Under these

circumstances, the learned Judge was not justified in taking the view that the landlady had come into possession of that premises subsequent to the filing of the petition, which she has not occupied; and therefore, the landlady has to take care of herself and her six children. Under the circumstances, I am of the view that if an order of eviction is not passed, the landlady will be put to greater hardship.

10. Accordingly, H.R.R.P.No.5154/91 is allowed, the order dated 28th of September 1991 passed by the learned Judge is set aside and in its place, an order of eviction is passed against the tenant under Section 21(1)(h) of the Act.

11. Sri Nazeer, learned Counsel for the tenant, submitted that the finding of the learned Judge that the tenant has committed default in paying the arrears of rent within two months from the date of demand made and as such, the tenant is liable to be evicted under Section 21(1)(a) of the Act is erroneous in law. However, it is the case

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of the tenant that the monthly rent was only Rs.30/- and not Rs.100/- as claimed by the landlady. Therefore, Sri Nazeer submitted that the demand made in the notice is illegal.

12. I am unable to accept the said submission. It is not in dispute that the tenant has not paid the rent even calculated at Rs.30/- per month within two months from the date of the demand made as per notice Exhibit P-1. Therefore, I do not find any infirmity in the order passed by the learned Judge directing eviction of the tenant under Section 21(1)(a) of the Act. It is also relevant to point out that in view of the assertion made by the landlady in the application filed seeking appointment of the Commissioner for inspection of the petition schedule premises, on 30th of March 1995, which has remained unchallenged, I am inclined to accept the case of the landlady that the tenant has vacated the petition schedule premises. It is also clear from the statement made by Sri Nazeer that inspite of

the letters including the registered letters written by him, the tenant has not responded to the same. He ^{had} further pointed out that one of the registered letters sent by him has been returned undelivered.

13. Therefore, H.R.R.P.No.4566/91 filed by the tenant is liable to be rejected and it is accordingly rejected.

14. Since the tenant has already vacated the petition schedule premises and kept the same under lock and key, he is given time till 31st of May 1998 to hand over vacant possession of the petition schedule premises to the landlady.

Sd/-
JUDGE

ANB.